

BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation  
of the

DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING

v.

MICHAEL L. HUDSON,

Respondent.

ANETTA FORD, Individually and as Guardian  
Ad Litem for ROBERT PIPPIN III, JOSEPH  
PIPPIN, GABRIEL PIPPIN, Minor Children, and  
DIANE FORD,

Complainants.

Case No.

H-200607-Q-0345-00  
C 07-08-060

09-06-P

DECISION ON  
RECONSIDERATION

Administrative Law Judge Caroline L. Hunt heard this matter on behalf of the Fair Employment and Housing Commission on December 10 and 11, 2008, in Marysville, California, and on January 9, 2009, in San Francisco, California. Timothy Muscat, Chief Counsel, and Megan Elsea, Staff Counsel, represented the Department of Fair Employment and Housing. Respondent Michael L. Hudson represented himself at hearing *in pro per*. American Sign Language interpreters Molly Bowen and Cindy Nobles interpreted the proceedings on the first day of the hearing; Molly Bowen and Marlowe Wilson interpreted the proceedings on the second day of hearing.

The matter was deemed submitted after receipt of the transcripts and the conclusion of the hearing on January 9, 2009.

On March 9, 2009, Administrative Law Judge Caroline L. Hunt issued her proposed decision. On April 14, 2009, the Commission adopted the proposed decision as its decision in the case. (*Dept. Fair Empl. & Hous. v. Hudson (Ford)* (Apr. 14, 2009) FEHC Dec. No. 09-01.)

On May 11, 2009 and on May 13, 2009, the Department of Fair Employment and Housing and respondent Michael L. Hudson, by his newly appointed attorney, Timothy J. Evans, Esq., respectively, each filed a Petition for Reconsideration. On May 13, 2009, the Commission granted reconsideration in order to permit further arguments on the

matter. The Commission invited the parties to brief the issues raised by the parties in their Petitions for Reconsideration: whether compensatory damages for emotional distress and civil penalties ordered in the final decision should be modified and whether the complaint in this matter was timely filed within the statutory period. The Commission also scheduled oral argument on these issues for its June 16, 2009 Commission meeting.

Both parties timely filed their respective briefs on June 4, 2009. Timothy J. Evans, Esq., on behalf of respondent Michael L. Hudson, waived oral argument. On June 16, 2009, Staff Counsel Megan Elsea appeared for the Department of Fair Employment and Housing and presented oral argument to the Commission.

After consideration of the entire record, including the parties' arguments upon Reconsideration, we fully affirm our adoption of the administrative law judge's proposed decision and issue the following Decision on Reconsideration. We designate the decision as a precedential decision of the Commission pursuant to Government Code section 12935, subdivision (h), and California Code of Regulations, title 2, section 7435, subdivision (a), on the issue of the applicability of a statute of limitations to a claim by a minor where her guardian ad litem has filed a claim on her behalf.

## FINDINGS OF FACT

1. On May 25, 2007, Anetta Ford, on behalf of herself and her minor children Robert Pippin III, Joseph Pippin, Gabriel Pippin and Christopher Pippin; and Diane Ford, (collectively complainants), filed a written, verified complaint with the Department of Fair Employment and Housing (DFEH or Department) against Michael Hudson. The complaint alleged that, from May 2005 to October 2006, Michael Hudson, owner of a house located at 998 Jay Street, Marysville, sexually harassed tenants Anetta Ford and Diane Ford, and also subjected them to derogatory remarks about their race, Black, thereby creating a hostile living environment and resulting in their eviction. The complaint alleged that Hudson's conduct violated Government Code section 12955, subdivisions (a), and (c), of the Fair Employment and Housing Act, Government Code section 12900, et seq. (the Act or FEHA).

2. The DFEH is an administrative agency empowered to issue accusations under Government Code section 12930, subdivision (h). On May 21, 2008, Phyllis W. Cheng, in her official capacity as Director of the DFEH, issued an accusation against respondent Michael L. Hudson. In the accusation, the DFEH alleged that, beginning in May 2005, respondent Hudson was the owner of a "housing accommodation" located at 998 Jay Street, Marysville, California (the Jay Street house), which he rented to complainants while residing in an adjacent garage on the premises. The DFEH's accusation alleged that respondent sexually harassed complainants Anetta Ford and her daughter Diane Ford; threatened to set loose his dogs on complainants and attempted to strike Anetta Ford; took advantage of Anetta Ford based on her disability (deafness) by entering her bedroom at night and coming up from behind her; racially harassed complainants; and forced complainants to move out of

998 Jay Street on October 30, 2006, because of the harassment, violence and intimidation by threats of violence.

3. The DFEH's accusation alleged that respondent's conduct constituted discrimination against the minor children based on race; discrimination against Diane Ford based on race and sex; and against Anetta Ford based on sex, race and disability; in violation of Government Code section 12955, subdivision (a). The DFEH further alleged that respondent discriminated against all complainants by engaging in acts of violence and intimidation by threats of violence on the bases of complainants' race and Anetta Ford's and Diane Ford's race and sex, in violation of Civil Code section 51.7, as incorporated into the Act by Government Code section 12948.

4. On July 7, 2008, the DFEH filed an amended accusation with the Commission, amending the name of minor Christopher Pippin, replacing the allegation that complainants were "forced to move out" with the allegation that they were "evicted by [r]espondent," and otherwise re-alleging the same violations against respondent Hudson as set out in the original accusation.

5. Complainant Anetta Ford's ethno-racial heritage is African American. Complainant Diane Ford describes herself as "black and white." Respondent Hudson is of Cherokee/Dutch/Irish and Chickasaw/Hispanic (Mexican) heritage.

6. Complainant Anetta Ford is deaf. She uses American Sign Language to communicate. In daily life, her daughter Diane frequently acts as an interpreter for her mother.

7. At all times relevant, the Jay Street house was a "housing accommodation," within the meaning of Government Code section 12927, subdivision (d). Respondent Hudson was the owner of the Jay Street house, within the meaning of Government Code section 12927, subdivision (e).

8. In March 2005, respondent Hudson was in the process of renovating the Jay Street house when he met complainants through mutual friends, Anthony and Tye Girard. Respondent Hudson's grandmother and pregnant girlfriend had recently died, so he no longer needed a three-bedroom house. He decided to offer it to complainants to rent, and move into the garage.

9. On April 1, 2005, respondent Hudson, lessor, and complainant Anetta Ford, lessee, entered into a written Monthly Lease Agreement for the Jay Street house, which had three bedrooms, two bathrooms and three garages. By the terms of the lease, complainant Anetta Ford and her five children were to occupy the residence and have access to one garage. The monthly rent set out in the lease was \$613, with an additional \$273 payable through Section 8 voucher assistance, for a total monthly rent of \$900. The written lease, which was a pre-printed form document, provided for a \$1,000 security deposit. Nevertheless, respondent did not require complainants to pay the security deposit.

10. In April 2005, complainant Anetta Ford moved into the Jay Street house with her five minor children: Diane Ford (date of birth: September 7, 1989); Robert Pippin III (date of birth: December 4, 1997); Joseph Pippin (date of birth: August 25, 1998); Gabriel Pippin (date of birth: April 3, 2001); and Christopher Pippin (date of birth: April 23, 2003).

11. Respondent Hudson retained possession of two garages at the Jay Street property. He stored possessions in one of the garages, and stayed in the other garage, where he had a cot to sleep on. Hudson rebated \$50 per month to Anetta Ford for his use of the bathroom and washer and dryer facilities inside the house. Anetta Ford agreed to this arrangement.

12. Between April 2005 and October 2006, respondent Hudson lived part-time in the garage at the Jay Street house, and part-time with a friend, Bruce Jamison, in his trailer on Myrna Avenue in Marysville. Hudson regarded these arrangements as temporary, while he went through the process of obtaining his commercial class A driver's license.

13. In May 2005, Anetta Ford's girlfriend, Annette Black Britton, moved into the house. Black Britton, like complainant Ford, is deaf.

14. Diane Ford's girlfriend, Katrina Hathaway, also spent a lot of time at the house, frequently staying overnight, and "practically living there."

15. At times, respondent Hudson asked for Diane Ford's help interpreting when he wanted to speak to Anetta Ford. On one occasion, he knocked on Diane's bedroom door late at night, telling her that he needed to speak to her mother.

16. In about June 2005, Anetta Ford's sister Audriece Tryeal moved into the Jay Street house. On July 2, 2005, Tryeal falsely reported to the Yuba County Sheriff's Department that respondent Hudson had assaulted and beaten her. Respondent Hudson was arrested. After investigation, the charges were dropped. While Hudson was held in custody overnight, Audriece stole items belonging to him in his garage and the trunk of his car, including cash, a portable phone, binoculars, and tools.

17. In August 2005, in the course of the investigation into Audriece Tryeal's allegations that Hudson had assaulted and beaten her, Cindy Alexander, Investigator with the Public Defender's Office, interviewed Diane Ford. Diane told Alexander that her aunt Audriece Tryeal had been beaten by her boyfriend in a dispute over drugs and that Hudson had not been involved. When questioned by Alexander about Hudson's alleged use of racial epithets, Diane denied that he had used any racial terms.

18. Between June 2005 and February 2006, respondent Hudson occasionally put his arm around Diane Ford's shoulder. At times, he tried to hug her, and she turned away from him, deflecting his attention. On one occasion, Hudson tried to give Diane a kiss on the cheek, but she pushed him away. On another occasion, when Hudson put his arm around Diane's shoulder, his hand grazed the side of her breast. Diane felt "gross," as if she needed to take a shower.

19. In the summer of 2005, Hudson made comments to Diane about her appearance, complimenting her “nice body.” Because of this unwanted attention, Diane changed the way she dressed around Hudson, for example, no longer wearing shorts or skirts.

20. In late October 2005, respondent Hudson told Diane Ford and her girlfriend Katrina Hathaway that he would give them money to watch them have sex. Diane Ford was disgusted, shocked and repulsed by the suggestion. She told him, “That’s sick; you’re old.” On one subsequent occasion, about a month later, respondent repeated his offer to pay money to watch the girls have sex. Again, Diane was sickened and shocked. She felt that respondent Hudson’s remark was inappropriate. She told him that she had already told him “No.”

21. In March 2006, four additional people moved into the Jay Street house, signing a handwritten agreement to pay complainant Anetta Ford \$200 per person for room and board and \$85 for utilities, for a total rental amount of \$285 per person per month. Respondent Hudson was unaware of this sublease and financial arrangement. At around this time, he reduced the monthly rent for the Jay Street house to \$825.

22. On a date not established in the record, Anetta Ford’s mother Earlene Tryeal moved into the Jay Street house. Respondent Hudson understood that Earlene Tryeal was “on the lam” and reported her presence at the house to the Yuba County Sheriff’s Department. Earlene Tryeal was subsequently arrested on a pending warrant.

23. During the course of complainants’ tenancy at the Jay Street house, complainant Anetta Ford and respondent Hudson had a number of verbal altercations. Hudson made no secret of the fact that he disapproved of Anetta Ford’s sister Audriece Tryeal and their mother Earlene Tryeal. Hudson was also upset because he believed that some of complainants’ subtenants used illegal drugs, having found drug paraphernalia on the premises. Anetta Ford and respondent Hudson also got into verbal fights about the cost of utilities, with Anetta at one point demanding that Hudson pay her \$250 for cable and telephone bills, although he had a separate telephone line. In the course of these verbal altercations, Diane Ford was often caught in the middle, as both interpreter and mediator.

24. One summer night during complainants’ tenancy at 998 Jay Street, Diane Ford and Katrina Hathaway were in bed together when they heard a horse outside. Looking out their bedroom window, Diane saw respondent Hudson, accompanied by a woman riding a horse. Diane “freaked out,” thinking that Hudson may have tried to watch her and her girlfriend while they were in bed. She felt that she had no privacy.

25. During the summer of 2006, there were at least 13 residents living in the three-bedroom Jay Street house: complainants, their subtenants and, until she was arrested, Anetta Ford’s mother Earlene Tryeal.

26. During this period of summer 2006, Diane Ford felt stressed, angry and irritable, and had trouble sleeping. Her relationship with her mother became strained. Diane took her frustrations out on her girlfriend Katrina Hathaway.

27. In August 2006, Diane Ford, having graduated from high school, moved out and went to live with Katrina Hathaway. For a couple of months, Diane still had trouble sleeping, but she soon felt better, regaining her smile and her “fun-loving” nature. She remained concerned about her mother, however, and often visited the Jay Street house.

28. In September 2006, respondent Hudson was issued a commercial class A driver’s license.

29. In October 2006, complainant Anetta Ford failed to pay the rent due on the first of the month. When respondent told complainants that they could not continue to stay at the Jay Street house if Anetta Ford refused to pay the rent, Diane Ford responded to him, “Go ahead and evict her,” and “You don’t want to mess with disabled people.”

30. On October 7, 2006, respondent Hudson served complainants with a Three Day Notice to Pay Rent or Quit.

31. On October 13, 2006, respondent Hudson filed a Complaint—Unlawful Detainer against complainants.<sup>1</sup> That same day, complainants were served with copies of the Unlawful Detainer Complaint and related papers.

32. On October 19, 2006, Anetta Ford filed a Request for Order to Stop Harassment (Civil Harassment) against respondent Hudson. In her request, complainant stated that respondent had, *inter alia*, tried to hit her, swore at and threatened her minor children with his dog; sexually harassed her and her daughter, and sent his “drug friends” to serve her with legal papers. On October 20, 2006, the Court scheduled a hearing date in the case for November 6, 2006, but did not issue a temporary restraining order pending the hearing. The case was later dismissed.

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<sup>1</sup> Pursuant to California Code of Regulations, title 2, § 7431, the administrative law judge took official notice of the following records of the Superior Court of California, County of Yuba:

- (a) In the case entitled Mike Hudson v. Anetta Ford, et al., case number YCMCCVUD 06-0000333, the Complaint—Unlawful Detainer and related papers filed by respondent Hudson on October 13, 2006; Proofs of Service of Summons; Writ of Possession issued on October 23, 2006; and return on Writ of Possession executed October 30, 2006.
- (b) In the case entitled Anetta Ford v Hudson, complainant’s Request for Order to Stop Harassment, case number YCMCCVPT 06 0000693, filed on October 19, 2006; Notice of Hearing dated October 20, 2006; and
- (c) In the Small Claims Court case entitled Anetta Ford v. Michael L. Hudson, case number CV CL 06-0000263, Decision of Hon. Kathleen R. O’Connor, dated February 5, 2007.

In addition, at hearing, a number of evidentiary matters were taken under submission and the administrative law judge ruled in her proposed decision as follows: exhibit 8 was admitted as probative on events that took place at the Jay Street house during complainants’ tenancy. The administrative law judge denied admission of exhibits 9, 10 and 11, on the grounds that the prejudicial value outweighed any probative value. (Evid. Code § 352.)

33. On October 23, 2006, the unlawful detainer case filed by respondent Hudson against complainants came on for default hearing before the Superior Court of California, County of Yuba. That day, a Clerk's Judgment for Possession was entered in favor of Hudson and against complainants, and a Writ of Possession was issued by the Court.

34. On October 30, 2006, the day that the Sheriff's Department noticed the eviction, complainants moved out of the Jay Street house. In the process, they removed light bulbs, toilet seats and marked up the walls.

35. In about November 2006, Anetta Ford filed a Small Claims Court action against Michael Hudson, case number CV CL 06-0000263, seeking \$7,500 in damages for breach of the implied warranty of habitability at the Jay Street house. Hon. Kathleen R. O'Connor, Judge of the Superior Court, in her decision in the matter dated February 5, 2007, *inter alia*, denied the claim of breach of habitability, finding that Anetta Ford "committed waste upon the premises." The damage documented in the Court's decision included pulled wiring, mold resulting from accumulated garbage, torn linoleum and missing light fixtures.

#### Amendments to the Accusation Charges

36. At the pre-hearing conference held in this matter on December 2, 2008, the DFEH orally amended the First Amended Accusation to delete lines 8-9 of paragraph 3, on page 4. The deleted language had stated that "[r]espondent Hudson said to a DFEH investigator, 'Diane moved out because I touched her,' or words to that effect."

37. At the hearing on December 11, 2008, the DFEH dropped the charge that respondent Hudson had violated Civil Code section 51.7 by acts of violence or intimidation toward the minor boys: complainants Robert, Joseph, Gabriel and Christopher Pippin.

### DETERMINATION OF ISSUES

#### Statute of Limitations

In his Petition for Reconsideration and subsequent briefing, respondent argues that the statute of limitations barred complainant Diane Ford's claim because the last conduct by respondent found to be unlawful in the Commission's decision, occurred more than one year before the filing of the complaint in this matter, which was filed on May 25, 2007. The DFEH asserts that the sexual harassment of complainant Diane Ford was alleged in the accusation to have continued until she moved out of the Jay Street house in August 2006, and thus, the complaint was timely filed.

Government Code section 12980, subdivision (b), requires that a complaint must be filed within one year after the last wrongful act.<sup>2</sup> To assert effectively a statute of limitations defense as a bar, however, it must be raised at the administrative hearing. A statute of limitations that is not raised at the time of the administrative hearing is waived. (*Bohn v. Watson* (1954) 130 Cal.App.2d 24, 26.) Here, respondent raised the defense for the first time in his Petition for Reconsideration and thus waived this defense as a bar to this action.

Moreover, Government Code section 12960, subdivision (d)(4), tolls the statute of limitations for a minor until the minor reaches the age of majority, in the case of Diane Ford, until September 7, 2008.<sup>3</sup> A guardian ad litem, acting on behalf of the minor, also has until the minor reaches majority to file a claim, as reflected by a clear public policy to protect children “during their minority from the destruction of their rights by the running of the statute of limitations.” (*Williams v. Los Angeles Metropolitan Transit Authority* (1968) 68 Cal.2d 599, 602.)<sup>4</sup> Complainant was born September 7, 1989, and was under 18 when the unlawful sexual conduct occurred. As the complaint in this matter was filed on May 25, 2007, before complainant reached majority and well before she turned 19, this decision finds that the complaint filed on her behalf by her mother, complainant Anetta Ford, was timely filed. Accordingly, the Commission finds the statute of limitations defense, in addition to having been waived at hearing, to be without merit.

## Liability

### A. Sexual Harassment

The DFEH alleges that complainants Anetta Ford and Diane Ford were subjected to unlawful sexual harassment and discrimination by respondent Hudson, resulting in unlawful housing practices in violation of Government Code section 12955, subdivision (a).

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<sup>2</sup> Notwithstanding the Department’s assertion that respondent’s sexual harassment of complainant Diane Ford continued through August 2006, the Commission’s decision finds that the evidence at hearing established that the last wrongful act occurred in February 2006.

<sup>3</sup> The statute of limitations provisions concerning minors under Government Code section 12960, subdivision (d)(4), also apply to housing complaints (Gov. Code § 12980, subd. (c) [“The department may thereupon proceed upon the [housing] complaint in the same manner and with the same powers as provided in this part in the case of an unlawful [employment] practice . . . .”]) and are to be interpreted broadly. “[T]express provisions of the FEHA evince a legislative intent that it and its statute of limitations must be liberally interpreted in favor of both allowing attempts at reconciliation and ultimately resolving claims on the merits.” *McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 107-108.

<sup>4</sup> (In *Williams v. Los Angeles Metropolitan Transit Authority*, *supra*, 68 Cal.2d at p. 602, the court held that a guardian ad litem’s filing of an action on behalf of a minor brought after the statutory limitations period had ended but before the minor reached the age of majority is not barred by the statute of limitations. In accord, *Rodriguez v. Superior Court* (2003) 108 Cal.App.4th 301, 312 [Claims of plaintiffs (minors) for abuse and neglect brought through their guardians ad litem are tolled during the period of their minority, giving plaintiffs until their 19th birthdays to file a civil action. The court held that since all plaintiffs, through their guardians ad litem, had filed their claims before their 19th birthday, these claims were timely filed.]



Respondent denies each and all of these allegations. He asserts that complainants are not credible, and points out that the first time complainants raised any issue of harassment or discrimination was not until after he began the eviction proceedings.

Sexual harassment is unwelcome sexual conduct, or other hostile or unwelcome conduct linked to the complainant's sex, which deprives the complainant of a housing benefit, including the right to live in a discrimination-free housing environment. (Gov. Code, §§ 12927, subd. (c), and 12955, subd. (a); *Dept. Fair Empl. & Hous. v. River Meadow Trailer Park* (Oct. 7, 1998) No. 98-15, FEHC Precedential Decs. 1998-1999, CEB 3, p. 13 [*River Meadow*]; *Beliveau v. Caras* (C.D.Cal. 1995) 873 F.Supp. 1393, 1398.)

Unwelcome sexual conduct deprives an individual of a discrimination-free housing environment when the conduct is sufficiently severe or sufficiently pervasive to alter the terms, conditions, privileges, facilities or services so as to create an intimidating, oppressive, hostile, unsafe, abusive or offensive housing environment or otherwise interfere with the quiet enjoyment of the housing environment. (*Brown v. Smith* (1997) 55 Cal.App.4th at p. 767; cf. *Beliveau v. Caras*, *supra*, 873 F.Supp. at p. 1398.) The objective severity of the harassment is judged from the perspective of a reasonable person in the complainant's position, considering all the circumstances. (*Oncale v. Sundowner Offshore Services, Inc.* (1998) 523 U.S. 75, 81.) The trier of fact's inquiry is guided by "[c]ommon sense, and an appropriate sensitivity to social context." (Ibid.)

Sexual harassment in housing is a form of unlawful sexual discrimination under Government Code section 12955. (*Brown v. Smith*, *supra*, 55 Cal.App.4th at pp. 781-2; *River Meadow*, *supra*, 1998-1999, CEB 3, at p. 14.

#### B. Allegations That Respondent Sexually Harassed Diane Ford

The DFEH asserts that respondent Hudson subjected complainant Diane Ford to sexual harassment by trying to kiss and hug her, grazing his hand on the side of her breast, making remarks about her appearance, offering to pay her and her girlfriend money in return to watch them engage in sexual acts, and looking through Diane's bedroom window to watch her have sex with her girlfriend (the "peeping tom" incident). This behavior, if it occurred, constitutes the kind of hostile sexual conduct that may form the basis for a sexual harassment violation under the Act. (*River Meadow*, *supra*, 1998-1999, CEB 3, at p. 14.)

In a case in which credibility is key, complainant Diane Ford's testimony that respondent Hudson offered to pay her to watch her and her girlfriend have sex is credited. Diane Ford did not embellish or exaggerate, and her demeanor and manner of testimony support finding her credible. Accordingly, the preponderance of the evidence established that the sexual conduct to which Diane Ford testified occurred.

The Department's characterization of the alleged "peeping tom" incident as sexual conduct by respondent, however, is not supported by the testimony at hearing. Both Diane Ford and Katrina Hathaway testified that they heard a horse, then saw respondent accompanied by a woman riding a horse, outside their bedroom room window. While it was

perhaps understandable for Diane Ford to feel apprehension about Hudson's proximity to her window late at night, the proffered evidence does not support a finding that respondent Hudson was engaged in an attempt to watch the girls having sex.

This decision finds that respondent Hudson's offers to Diane Ford to pay to watch her have sex were sufficiently severe, and his repeated remarks about her appearance and attempting to kiss and hug her, on one occasion grazing the side of her breast, were sufficiently pervasive, to create an oppressive, hostile and offensive living environment, thereby depriving her of discrimination-free housing. This is particularly so given Diane's age and vulnerability, as a 16 year-old girl.<sup>5</sup>

It is noted that complainants' housing environment was at times chaotic and unsettling, lacking the boundaries that normally define landlord-tenant relationships. Respondent's coming and goings within the house, with complainant Anetta Ford's agreement, made their interactions closer to roommates than traditional landlord and tenant. This does not insulate respondent from responsibility for his conduct, however.

In this case, respondent shall be held liable for subjecting Diane Ford to sexual harassment, in violation of Government Code section 12955, subdivision (a).

#### C. Allegations that Respondent Sexually Harassed Anetta Ford

The DFEH also asserts that respondent Hudson sexually harassed Anetta Ford during complainants' tenancy at 998 Jay Street. Complainant Anetta Ford testified that respondent Hudson entered her bedroom late at night on at least three occasions, when he was drunk, touched her on her bottom five or more times, and frequently, at least once a month, looked at her body and down her blouse. She further testified that she called the police about this alleged harassment, and that the police told her that there was nothing they could do about it, because it was the landlord's property.

This decision finds that Anetta Ford testimony was inconsistent, variable and at times evasive. Her assertion that there were at least four sheriff's reports about her complaints of harassment to the sheriff's department was not borne out by the record. Moreover, her claim that the deputies told her that "there was nothing [they] can do" because it was the landlord's property, strains credulity.<sup>6</sup>

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<sup>5</sup> Respondent argues that the timing of complainants' allegations of sexual harassment, brought after he instituted eviction proceedings, is suspicious. While Diane Ford acknowledged in her testimony that she did not complain to her mother about Hudson's offers to watch her have sex in exchange for money, she credibly explained that she did not want to place that burden on her mother because "she stresses out enough."

<sup>6</sup> Anetta Ford also testified that she was forced to stop paying the rent in October 2006 due to the ongoing sexual harassment and because there was mold in the Jay Street house. The latter claim was specifically rejected by Hon. Kathleen O'Connor of the Yuba County Superior Court, when the Judge found that the mold and unsanitary conditions at the Jay Street house were caused by complainants' "committing waste" on the premises.

Annette Black Britton, testifying to corroborate Anetta Ford, embellished the alleged incidents, effectively contradicting notable aspects of Anetta Ford's testimony. For example, Britton testified that the first time Hudson entered the bedroom at night, he was holding a knife in his hand. Anetta Ford did not at any time mention a knife.

Based on the unreliable nature of this testimony, the preponderance of the evidence does not support a finding that respondent sexually harassed Anetta Ford.

#### D. Racial Harassment

The DFEH also charges that respondent violated Government Code section 12955, subdivision (a), by racially harassing and discriminating against all complainants. Respondent asserts that he did not harass or discriminate against complainants based on their race, and that he filed the eviction proceedings because of problems with drugs on the premises and because of complainant's failure to pay the rent.

The evidence established that the Jay Street house was a contentious, argumentative household. There were a number of verbal altercations between Anetta Ford and respondent Hudson, concerning allegations of drug abuse by friends and relatives, and the claim by Anetta Ford that Hudson pay \$250 for utilities and the telephone. While this decision neither condones nor diminishes the incendiary nature of the n-word used by any person, here the record reveals that there was mutual yelling, swear words and epithets, back and forth. Complicating this record, when Cindy Alexander, Public Defender Investigator, asked Diane Ford if respondent had ever used racial epithets, Diane denied that he had. Further, the evidence established that it was complainants' conduct, in particular not paying the October rent, which led to their eviction from the Jay Street house.

Based on this record, the preponderance of the evidence does not establish that respondent harassed or discriminated against complainants based on their race, in violation of Government Code section 12955, subdivision (a).

#### E. Disability Discrimination

The DFEH asserts that respondent discriminated against complainant Anetta Ford based on her disability (deafness). The record, however, does not support a finding that respondent treated complainant differently from other tenants or subjected her to adverse treatment because she was deaf. Nor, as noted above, were the eviction proceedings shown to be other than in response to complainants' failure to pay the October 2006 rent.

Thus, the DFEH did not establish that respondent Hudson discriminated against complainant Anetta Ford because she was deaf, in violation of Government Code section 12955, subdivision (a).

#### F. Ralph Act Violence and Intimidation

The DFEH asserts that respondent Hudson discriminated against complainants by engaging in acts of violence and intimidation by threats of violence on the bases of complainants' race and sex, in violation of the Ralph Act, Civil Code section 51.7, as incorporated into the Act by Government Code section 12948. Respondent Hudson denies any threats or intimidation.

The Ralph Civil Rights Act protects the rights of all persons within California to be free from any violence or threats of violence against their persons because of their protected status. A violation of the Ralph Act, as incorporated into FEHA through Government Code section 12948, is established if a preponderance of the evidence demonstrates that respondent engaged in violence or intimidation by threat of violence toward a complainant and that there is a causal connection between that complainant's sex or race and this violence or intimidation by threat. A violation is established if such a factor was any part of the motivation for respondent's conduct. (*Dept. Fair Empl. & Hous. v. Capital Hills Arco* (June 12, 2006) No. 06-03, FEHC Precedential Decs. 2006 WL 2239656 at \* 10 (Cal.F.E.H.C.).)

Anetta Ford testified that one day, she became frightened, because respondent's dog barked at her. Complainant testified that she believed respondent had trained his dog to bark at her because she saw respondent say something to the dog just before he barked.

The record is insufficient to support an inference that respondent Hudson had trained his dog, Spot, to intimidate complainants. Also, given the problems noted earlier regarding Anetta Ford's credibility, the charge of a Ralph Act violation is not established.

#### Remedy

Having established that respondent Hudson sexually harassed complainant Diane Ford in violation of the Act, the DFEH is entitled to whatever forms of relief are necessary to make that complainant whole for any loss or injury she suffered as a result. The DFEH must demonstrate, where necessary, the nature and extent or the resultant injury, and respondent must demonstrate any bar or excuse it asserts to any part of these remedies. (Gov. Code § 12970, subd. (a); Cal Code Regs., tit. 2, § 7286.9; *Donald Schriver, Inc. v. Fair Empl. & Hous. Com.* (1986) 220 Cal.App.3d 396, 407; *Dept. Fair Empl. & Hous. v. Madera County Bd. of Supervisors* (Sep. 7, 1983) No. 83-22, FEHC Precedential Decs. 1982-83, CEB 20, pp. 33-34 [1983 WL 36471 (Cal. F.E.H.C.).])

The DFEH seeks emotional distress damages, a civil penalty and affirmative relief.

A. Make-Whole Relief

1. Compensatory Damages for Emotional Distress

The Commission has the authority to award complainant Diane Ford actual damages for emotional distress caused by respondent's violation of the FEHA. (Gov. Code, § 12987, subd. (a)(4); *Konig v. Fair Empl. & Hous. Com.* (2000) 28 Cal.4th 743, 758.)

The record established that Diane Ford was disgusted, shocked and repulsed when respondent Hudson offered to pay to watch her have sex. Complainant also credibly testified that when respondent Hudson tried to hug or kiss her, she felt "gross," as if she needed a shower. In response to his comments about her "nice" body, she altered how she dressed around Hudson, avoiding shorts and skirts.

Diane Ford also testified to her emotional distress in the summer of 2006. She testified that she felt stressed, angry and irritable, had trouble sleeping, and that her relationships with her mother and girlfriend suffered. It took about two months for Diane to feel less stressed after she had moved out, and to regain her smile and her "fun-loving" nature.

This decision does not find, however, that Diane Ford's emotional state and decision to move out in August 2006 were primarily the result of respondent Hudson's sexually harassing conduct. The actionable sexual harassment to which Diane testified occurred many months prior. And by the summer of 2006, the tenants and sub-tenants living at the Jay Street house numbered at least 13 persons, including eight adults, plus Diane and her four young brothers, in the three bedroom house. In addition, Diane's grandmother Earlene Tryeal, also lived there for a time, until she was arrested on a warrant. Diane was in the position of trying to act as interpreter and peacemaker in a contentious household environment.

In its Petition for Reconsideration, subsequent briefing, and in oral argument, the DFEH asserted that the Commission's award for compensatory damages was "anomalously low" compared to other similar sexual harassment cases decided both by the Commission and by federal adjudicators interpreting the substantially equivalent federal Fair Housing Act<sup>7</sup> and employment sexual harassment provisions under Title VII.<sup>8</sup> The DFEH cited a number of non-precedential Commission housing discrimination sexual harassment decisions as well as settlements it has received in cases that it asserts are comparable to the facts in the instant case. Respondent objected that the DFEH had cited non-precedential Commission decisions which cannot be relied upon or cited by the Commission and the DFEH's assertions about settlements in comparable cases are "opinion evidence" "under

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<sup>7</sup> Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, et seq.

<sup>8</sup> Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq.

circumstances unknown and unknowable to respondent,” the arguments, “no more than a structure of cards, placed on a foundation of smog.”

After careful consideration of all arguments raised by the parties, the Commission affirms its original \$5,000 award as the appropriate amount based on the evidence of this case.<sup>9</sup> We agree with the administrative law judge’s focus on the damages caused by respondent Hudson’s conduct, rather than the significant other contributing stressors in Diane Ford’s life. Considering the facts of this case in light of the factors set forth in Government Code section 12970, subdivision (c), respondent will be ordered to pay to complainant \$5,000 in damages for her emotional distress. Interest will accrue on this amount, at the rate of ten percent per year, compounded annually, from the effective date of this decision until the date of payment. (*Dept. Fair Empl. & Hous. v. Merribrook Apartments* (1988) No. 88-19, FEHC Precedential Decs., 1988-1989, CEB 7, p. 22.)

#### B. Civil Penalty

The DFEH asks that the Commission award a civil penalty against respondent Hudson.

Government Code section 12987, subdivision (a)(3), authorizes the Commission to order a respondent to pay a civil penalty up to a maximum of \$10,000 for a first violation of the Act. (*River Meadow, supra*, 1998-1999, CEB 3, at p. 34.) Government Code section 12987, subdivision (a)(3), in setting out the test for civil penalties under FEHA, requires clear and convincing evidence of “oppression, fraud or malice, expressed or implied, as required by Civil Code section 3294.” In determining whether to award a civil penalty, the Commission considers evidence of the following: willful, intentional or purposeful conduct; refusal to prevent or eliminate discrimination; conscious disregard for fair housing rights; commission of unlawful conduct; intimidation or harassment; conduct without just cause or excuse, or multiple violations of the Act. (Gov. Code, § 12987, subd. (b).)

Respondent Hudson’s conduct toward Diane Ford, then 16 years old, has been found to constitute sexual harassment in violation of the Act. The record also established that the parties’ household arrangements, with Hudson staying in the garage and sharing the bathroom and washing facilities at the Jay Street house, compromised the boundaries between a landlord and tenant. The evidence also showed, clearly and convincingly, that respondent crossed the line in his conduct toward Diane Ford, and thereby acted in conscious disregard of her rights as a tenant, within the meaning of Civil Code section 3294. (Gov. Code, § 12987, subd. (b).)

There was no evidence that respondent had undertaken any training in his obligations as a landlord under the Act. On the other hand, in mitigation, the record indicated that

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<sup>9</sup> The DFEH cited a number of non-precedential decisions, that the Commission did not consider, nor could it. (Cf. Cal. Rule of Court, rule 8.1115; *Auburn Woods I Homeowners Ass’n v. Fair Empl. & Hous. Com.* (2004) 121 Cal.App.4th 1578, 1595; Gov. Code, § 11425.60.)

respondent rented to complainants out of compassion—a single mother with a disability and five minor children.

The Commission affirms the amount of \$500, as found by the administrative law judge, as an appropriate civil penalty based on the evidence of this case, together with interest thereon, at the rate of ten percent per year, compounded annually, from the effective date of this decision until the date of payment.<sup>10</sup>

### C. Affirmative Relief

The DFEH's accusation asks that respondent be ordered to: cease and desist from sexual harassment and to undergo training about sexual harassment prevention. The Act authorizes the Commission to order affirmative relief, including an order to cease and desist from any unlawful practice, and an order to take whatever other actions are necessary, in the Commission's judgment, to effectuate the purposes of the Act. (Gov. Code § 12970, subd. (a)(5).)

Respondent will be ordered to cease and desist from sexually harassing any tenants or applicants and from denying them their rights to a discrimination-free housing environment. In the event respondent again seeks to rent out the Jay Street house, or any other housing accommodation in California, he shall be ordered to undergo training about sexual harassment prevention, at his own expense.

## ORDER

1. Respondent Michael L. Hudson shall immediately cease and desist from sexually harassing any tenants or applicants and from denying their rights to a discrimination-free housing environment under the Fair Employment and Housing Act.

2. Within 60 days of the effective date of this decision, respondent Michael L. Hudson shall pay to complainant Diane Ford compensatory damages for emotional distress in the sum of \$5,000, together with interest thereon, at the rate of ten percent per year, compounded annually, from the effective date of this decision until the date of payment.

3. Within 60 days of the effective date of this decision, respondent Michael L. Hudson shall pay to complainant Diane Ford a civil penalty in the amount of \$500, together with interest thereon, at the rate of ten percent per year, compounded annually, from the effective date of this decision until the date of payment.

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<sup>10</sup> On Reconsideration, the DFEH asked the Commission to reconsider and increase its civil penalties award, citing the same sources that it used for arguing for an increase of emotional distress damages. Respondent also objected to this argument, for the same reasons articulated for increasing the emotional distress award.

4. Within 60 days of the effective date of this decision, if respondent Michael L. Hudson rents out a housing accommodation within the state of California, he shall undergo, at his own expense, training on sexual harassment prevention under the Fair Employment and Housing Act.

5. Within 100 days after the effective date of this decision, respondent Michael L. Hudson shall in writing notify the Department of Fair Employment and Housing and the Commission of the nature of his compliance with sections two through four of this Order.

6. Prior to receipt of payment, complainant Diane Ford shall comply with Government Code section 12987, subdivision (b), by waiving in writing any rights or claims she may have against Michael L. Hudson under Civil Code section 52 based on the events described in this decision.

Pursuant to Government Code section 12935, subdivision (h), and California Code of Regulations, title 2, section 7435, subdivision (a), the Commission designates this decision as precedential on the issue of the applicability of a statute of limitations in a claim by a minor where her guardian ad litem has filed a claim on her behalf.

Any party adversely affected by this decision may seek judicial review of the decision under Government Code sections 11523 and 12987.1, Code of Civil Procedure section 1094.5 and California Code of Regulations, title 2, section 7437. Any petition for judicial review and related papers should be timely served on the Department, Commission, respondent and complainants.

DATED: September 30, 2009

FAIR EMPLOYMENT AND HOUSING COMMISSION

\_\_\_\_\_  
GEORGE WOOLVERTON

\_\_\_\_\_  
PATRICIA PEREZ

\_\_\_\_\_  
LINDA NG

\_\_\_\_\_  
STUART LEVITON

\_\_\_\_\_  
DAVE CAROTHERS